

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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UNITED STATES OF AMERICA,

-vs-

Horace Milton Black.

Civil Action No: 2:05cv1178-WKW

AFFIDAVIT OF HORACE M. BLACK

My name is Horace Black. I make this affidavit pursuant to court order and in response to Terry R. Sally's affidavit. On April 12, 2005 I tried to withdraw my plea because the court sentenced me to a sentence that was not part of the plea agreement, the court denied my withdrawal. See Sentencing Transcripts. I then advised Mr. Smyly to appeal, and he assured me that he would. I tried to contact Mr. Smyly from the county jail that I was detained in and his office would not accept the collect calls, therefore, I called Nora Byrd and she called Mr. Smyly's office and put me on three way, and once again, I was unable to reach Mr. Smyly. I was then advised by individuals who had already been through the legal system to contact the eleventh circuit court of appeals and inquire about my appeal on my own, which I did, and I was informed that there was no appeal pending on my behalf. Based on this information, after repeated phone calls through three-way by way of Nora Byrd, I attempted to contact Mr. Smyly to see why the appeal was not in the appeals court, I finally got in touch

with Mr. Smyly and he told me that there was no appeal being filed because he saw no appealable issues.

Respectfully submitted,

Horace M. Black

A handwritten signature in cursive script that reads "Horace Black". The signature is written in dark ink and is positioned below the printed name.

Dated:

February 1, 2006

CERTIFICATE OF SERVICE

I certify that I am the party to this cause and that true and correct copy of this SUMMONS was mailed first class postage prepaid to the respondent:

A. Clark Morris
One Court Square Suite 201
P.O. Box 197
Montgomery, AL 36101

on this 15th day of FEBRUARY, 2006.

Before me the undersigned, a Notary Public in the State

of _____, County of _____. Appeared

Horace Black
(Petitioner's Signature)
Horace Black

and acknowledged the execution of this instrument on

this _____ day of _____, 199____.

NOTARY PUBLIC my commission expires _____